

# *Twenty Years of the European Charter of Local Self-Government in Slovenia: A Success Story?*

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In the approximately two and a half decades since 1990, Slovenia has undergone a series of unprecedented historical events and has often been characterised as a success story. The author focuses on the assessment of the development of Slovenian local self-government in the light of the provisions on subsidiarity and financial autonomy set out in the European Charter of Local Self-Government (ECLSG). The reasons for the implementation gap are discussed and the broader political context is explained.

**Keywords:** reform, local self-government, inter-municipal cooperation, financial resources, Slovenia

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## 1. Introduction

In only two and a half decades Slovenia has undergone a series of unprecedented historical events, starting with the first democratic election in 1990 and the establishment of an independent state in 1991. Other major events include full membership of the European Union (EU) in 2004, joining the Economic and Monetary Union and the Schengen Area in 2007, being the first new member state to preside over the EU Council from January to June of 2007, and joining the OECD in 2010 (Virant & Rakar, 2017b). Consequently, Slovenia has often been characterised as a success story (Fink-Hafner, 2007; cf. Bugaric & Kuhelj, 2015). Generally speaking, success is defined as the accomplishment of an aim. In the field of local self-government, major legal changes occurred several years before the ratification of the European Charter of Local Self-Government (ECLSG) and they were in line with this document (Grad, 2018). What was, therefore, the aim of ratifying the ECLSG? The ratification was no doubt related to Slovenia's full membership status in the Council of Europe (1993) and to the fact that it was striving to become a member of the EU. Legislative materials reveal that the Slovenian government saw the ratification of the ECLSG as a means of (another) critical assessment of all contemporary legislation on local self-government. The government estimated that it would not be necessary to make major changes to the existing legislation because – as has been noted – both the Slovenian Constitution and the general law on local self-government were in line with the provisions of the ECLSG. Nevertheless, the government emphasized that sector-specific laws would have to take into account two basic principles of the ECLSG: subsidiarity and financial autonomy (Poročevalec DZ, 1996).

For the purpose of this paper, I will focus on the implementation of the subsidiarity principle and the enhancement of the financial autonomy of municipalities as two major aims of the ratification of the ECLSG. The question is: have these two aims been accomplished? The aim of the paper is therefore to assess the development of Slovenian local self-government in the light of the ECLSG's provisions on subsidiarity and financial autonomy.

In order to do that, I will briefly describe local self-government transition after independence; provide an in-depth analysis of the development of local self-government in terms of its territorial, functional, and financial dimension; and deliver a general assessment of the implementation of

the principles of subsidiarity and financial autonomy. This assessment will principally be based on an interpretation of quantitative indicators, i.e., the local expenditure quota in overall public spending and the local employment quota in total public sector employment (the principle of subsidiarity) and the proportion of local tax revenue in total local revenue (the principle of autonomy) (Kuhlmann & Wollmann, 2014; Ladner, Keuffer & Baldersheim, 2015; Milunovič, 2018). The structure of the paper follows the aims of the paper as they have been set out in this paragraph.

## 2. Local Self-Government After Independence

A crucial element of building Slovenia as a state involved the upgrading of public administration and strengthening of capacities to effectively take over the functions of former federal bodies (customs, border control, monetary policy, citizenship, passports, migration issues, and the like). At the same time, the process of establishing the political neutrality of public administration, aligned with the constitutionally established political pluralism and democracy, was underway (Virant & Rakar, 2017b).

A vital component of building democratic institutions and implementing democracy in practice was local self-government reform. The reform began with the adoption of the new Slovenian Constitution<sup>1</sup> in 1991, which provided a guarantee of local self-government (Art. 9). Although at the time of adoption the ECLSG had not yet been ratified, the constitutional provisions on local self-government were in accordance with this document. The constitutional arrangement of local self-government is comparable to other constitutional arrangements, especially in Europe. Nevertheless, it is rather brief, which consequently means that the constitution leaves many important issues of local self-government to be regulated by the law (Grad, 2018).

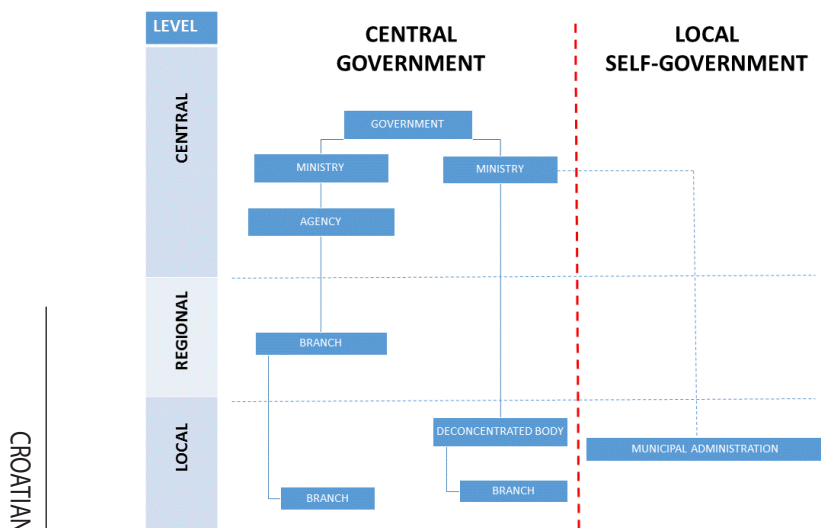
In 1993 a general law on local self-government (LSGA)<sup>2</sup> and a law on local elections were adopted, while in 1994 legislators adopted a law on local finance and a law on the establishment of municipalities. In 1995 territorial reform of municipalities was carried out, with the side effect of a strong impact on the reshaping of central government. Namely, in line

<sup>1</sup> Available in English at [www.us-rs.si/en/about-the-court/legal-basis/constitution/](http://www.us-rs.si/en/about-the-court/legal-basis/constitution/).

<sup>2</sup> Local Self-Government Act, Official Gazette of Republic of Slovenia No. 72/93 with amendments.

with constitutional provisions, a strict separation of local (self-)government functions and functions of central government was established (Figure 1). The central government took over responsibilities in implementing state policies and for that purpose a network of de-concentrated central governmental bodies (*administrative units* and *territorial branches of central government institutions*) was set up. Local self-government units, municipalities, took over – or better said retained – only “local affairs which affect only the residents of the municipality” (Art. 140. of the Slovenian Constitution) (Virant & Rakar, 2017b).

Graph 1: *Levels of Slovenian public administration*



Source: Author, based on Rakar & Tičar (2017).

Slovenia signed the ECLSG on 11 October 1994 and ratified it on 15 November 1996, with a commitment to observing all its provisions, with no reservations or declarations. In 1997 the ECLSG came into force, i.e., three to four years following major legislative reforms and six years after the new constitution.<sup>3</sup> Despite the seemingly illogical timetable of events (first legislation, then ratification), the enacted local self-government system was in line with the principles of the ECLSG, as confirmed by the first monitoring of the Council of Europe in 2001 (Lavtar, 2018).

<sup>3</sup> For a comparative overview of the ratifications of the ECLSG see Rakar (2018).

The legislation on local self-government was amended several times: the LSGA 17 times and the law on the financing of municipalities five times.<sup>4</sup> This is mainly due to the complexity of the transitional process.

### 3. Subsidiarity and Financial Autonomy

Local autonomy forms a basis for local democracy (Baldersheim, Ladner & Lidström, 2017), as well as a highly valued feature of good governance (Ladner, Keuffer & Baldersheim, 2015; cf. Musa, Lhomme & de La Rosa, 2016). Autonomy as an overarching concept consists of different dimensions, such as the legal position of local governments, their tasks, political discretion as these tasks are fulfilled, financial and fiscal autonomy, organisation, and protection against the interference and influence of higher authorities (Ladner, 2017).

It is clear that all the dimensions of autonomy are interrelated; therefore, I will focus on the scope of tasks and territorial scope of municipalities and financial resources, with inter-municipal cooperation (IMC) as a complementary topic (Teles & Swianiewicz, 2018).

#### 3.1. Subsidiarity

The principle of subsidiarity does not imply a distribution of power, at least not in the legal-technical meaning of the term. Instead, it is a basis for interpretation, a criterion for judgement, and support in the efforts to distribute powers, functions, and tasks vertically, in a consistent and coherent manner, in favour of the level of government that is closest to the citizens (Koprić et. al., 2014; Art. 4 ECLSG).

Analysing the scope of powers, functions, and tasks is a demanding endeavour. In Slovenia, there is a tool which enables legal analysis of the subject matter: a so-called catalogue of municipalities' powers.<sup>5</sup> Because this is a unique tool from an international perspective, it cannot be used for purposes of comparative analysis without additional detailed analysis of the sector-specific legislation of other jurisdictions. Therefore, from a compara-

<sup>4</sup> This does not include rulings of the Constitutional Court and other legislative interventions. See [www.pisrs.si](http://www.pisrs.si) for details.

<sup>5</sup> Available at <http://www.lex-localis.info/>.

tive perspective, quantitative economic indicators are usually used to assess the functional dimension of local self-government: 1) the local expenditure quota in overall public spending and 2) the local employment quota in total public sector employment (Kuhlmann & Wollmann, 2014).

Slovenia is a unitary state (Art. 4. of the Slovenian Constitution), yet, despite the fact that two levels of local self-government are provided for constitutionally, only one level has been established so far: municipalities. The distribution of powers between the local and the central level is based on the unitary structure of the state and on the constitutional provision regarding municipal powers (see *supra*, Art. 140. of the Slovenian Constitution). In practice, municipalities perform mainly service functions (provision of public services), while the central government mainly exercises regulatory functions (legal regulation). Public services are rarely provided by state or municipal bodies; in most cases either specialised legal persons are established (e.g. public company, public institution, public fund, or public agency) or concessions are granted (Pevcin & Rakar, 2015).

According to internationally established indicators of decentralisation, Slovenia belongs to the group of centralised states (Rakar & Klun, 2016; cf. Swianiewicz, 2014). The share of local (subnational) expenditure as a share of total public expenditure stands at around 20% and the share of local (subnational) expenditure as a share of GDP accounts for roughly 10% (OECD, 2016).<sup>6</sup>

Slovenia's public sector employment expressed as a percentage of total employment is at around 20% (OECD, 2015), and general government employment expressed as a percentage of total employment accounts for approximately 17% (OECD, 2017).<sup>7</sup> Within these 17%, only 24% are local employees (Tables 1 & 2).

*Table 1: General government employment in Slovenia in 2016*

<b>All employed or self-employed persons</b>	<b>824,485</b>
<b>General government employment (total 1–10)</b>	<b>162,658</b>
<i>1. Parliament and independent bodies accountable to the Parliament</i>	<i>871</i>

<sup>6</sup> According to the Ministry of Finance, the figure is lower (12.96% in 2015). This is due to the different methodology used.

<sup>7</sup> The remaining 3% are employees in public corporations (see OECD, 2015).

2. Public administration at the central level	33,087
2.1 Government	819
2.2 Ministries and agencies accountable to the ministries	11,979
2.3 Administrative districts (central, but deconcentrated)	2,141
2.4 Police	7,929
2.5 Army	6,302
2.6 Regulatory and similar agencies with legal personality	914
2.7 Public funds (including pension, health and unemployment insurance) with legal personality	3,003
3. Municipal administrations	4,883
4. Judiciary (courts, public prosecutors)	4,656
<b>Total 1–4 (bodies performing public authority)</b>	<b>43,497</b>
5. Education	59,002
6. Health care	36,002
7. Social welfare	12,137
8. Culture	6,414
9. Research	2,484
10. Other	3,122
<b>Total 5–10 (bodies performing public services)</b>	<b>119,161</b>

Source: Author, based on the Statistical Office of the Republic of Slovenia (2016); OPSI (2017); Virant & Rakar (2017a).

Table 2: *Share of local government employment in general government employment in 2016.*<sup>8</sup>

General government employment	162,658	
	With primary schools <sup>8</sup>	Without primary schools
Share of central government	76.7%	58%
Share of local government	42%	24.3 %

Source: Author, based on the Statistical Office of the Republic of Slovenia (2016); OPSI (2017); Virant & Rakar (2017a), OECD (2017).

<sup>8</sup> Primary schools are established by municipalities, but the standard programme, including salaries, is financed by the central government.

### 3.3. Territorial Scope of Municipalities

The territorial scope of municipalities varies considerably across the EU (see CEMR, 2016). The search for the “perfect size” of municipalities is a frequently debated issue (De Vries & Sobis, 2013; Koprić et. al., 2014; Steen, Teles & Torsteinsen, 2017) and one of the most popular tools used to achieve this goal is the merging of municipalities.<sup>9</sup> However, some countries have experienced the reverse trend: fragmentation of municipalities. This is particularly true of former socialist states, including Slovenia (Swianiewicz, 2010; Ladner, 2017).

The number of municipalities in Slovenia has grown over the last 20 years, in contrast to the pattern observed in most other OECD countries (OECD, 2015). Prior to 1994 Slovenia had had 62 municipalities,<sup>10</sup> after which the number began to rise, reaching 212 in 2017 (Graph 2).<sup>11</sup> The process of territorial reorganisation was complex because many factors contributed to this outcome (cf. Brezovšek, 2014). Common features of the process, especially in the period 1994–2002, included: 1) a significant role of the Constitutional Court, 2) a wide circle of initiators and proponents of establishing new municipalities, 3) the unclear role of the government, 4) the fact that the placement of the pre-referendum procedure before the National Assembly was inconsistent with its constitutional position, 5) an unclear relationship between regular legislative procedure and the procedure of establishing new municipalities, and 6) the unclear legal protection of initiators and proponents in the pre-referendum procedure (Urad za lokalno samoupravo in regionalno politiko, 2010). Regarding the role of the Constitutional Court, several points should be noted: 1) it changed its position on the legal nature of the referendum on the establishing of municipalities several times, 2) it grew consistently more directly involved in the procedures for establishing municipalities, and 3)

<sup>9</sup> The terms “amalgamation”, “fusion”, and “upscaling” are also used. This is not exactly a new trend, as reductions in the number of municipalities have been underway for decades, beginning in Austria and Sweden in the 1950s and reaching a peak in the 1960s and 1970s (Wollmann, 2004; Ladner, Keuffer & Baldersheim, 2015; Kuhlmann, 2017).

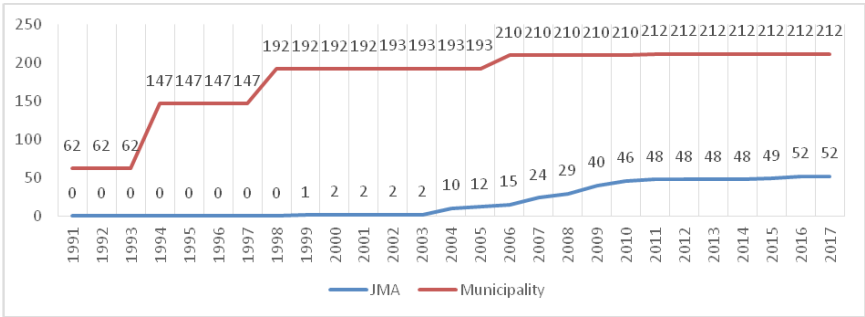
<sup>10</sup> In fact, they were communes (cf. Šmidovnik, 1995). For historic development see Brezovšek (2014).

<sup>11</sup> For the analysis of the consequences of establishing a large number of new municipalities since 1994 see Urad za lokalno samoupravo in regionalno politiko [Office for Local Self-Government and Regional Policy] (2010).



in several decisions it interpreted the right to local self-government as the right to a municipality (Grad, 2018).<sup>12</sup>

Graph 2: *Number of municipalities and joint municipal administrations (JMA) in Slovenia (1991–2018)*



Source: Author, based on data from [www.opsi.si](http://www.opsi.si).

According to the ECLSG, changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute (Art. 5.). The Slovenian Constitution goes even further, because a municipality cannot be established without a referendum (Art. 139. of the Slovenian Constitution). A referendum is therefore mandatory; however, it is not fully binding in its consequences. This is because it does not legally oblige the National Assembly to take into account the referendum decision, although it would be understandable that the decision should be taken into consideration unless there were very serious reasons to decide otherwise (Grad, 2018). According to the Constitutional Court’s opinion, such reasons include cases when taking the referendum results into account would lead to the creation of a municipality that would not comply with the constitutional and legal provisions and when it is objectively impossible to take into account the referendum will, due to the opposing referendum results (decision No. U-I-137/10).<sup>13</sup>

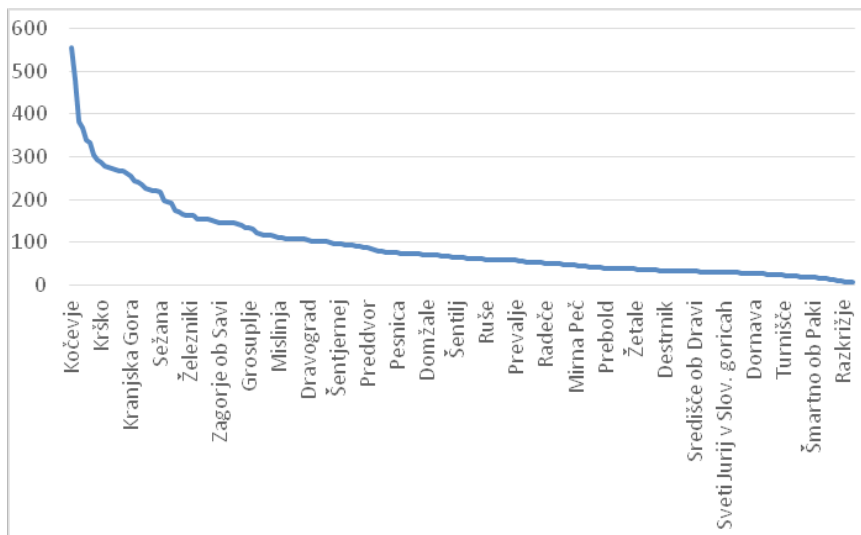
<sup>12</sup> Cf. decision No. U-I-137/10: “However, this constitutional right (*to local self-government*) does not refer to an abstract right to an own municipality in any area, but instead refers to the right of residents living in a specific area and is related to the common needs and interests in regulating local affairs.”

<sup>13</sup> Available in English at <http://odlocitve.us-rs.si/en/odlocitev/AN03470?q=U-I-137%2F10>.

### 3.4. Inter-Municipal Cooperation

At present, the average land size of a Slovenian municipality is around 95 km<sup>2</sup> and more than 50% of municipalities have fewer than 5,000 inhabitants (Statistical Office of the Republic of Slovenia, 2015; Graph 3). The average municipality has 9,600 inhabitants (twice as many as the EU average). Such organisation is rather fragmented<sup>14</sup> and weak, despite several reorganisation attempts since the mid-2000s, the last being in 2013 (Kovač, 2014/2015). This fragmentation is related to the administrative and financial capacity of municipalities.

Graph 3: *Size of selected Slovenian municipalities (km<sup>3</sup>)*<sup>15</sup>



Source: Author, based on the Statistical Office of the Republic of Slovenia (2015).

There are important differences between Slovenian municipalities in terms of size and population (size ratio 1:80, population ratio 1:880). Nevertheless, the constitutional concept of municipalities' functions is single-type. Despite widespread public assumption that municipalities, especially

<sup>14</sup> Nevertheless, Slovenia is not among the most heavily fragmented countries in the EU (Kuhlmann & Wollmann, 2014).

<sup>15</sup> The smallest municipality is Odranci, taking up 6.9 km<sup>3</sup>.

small ones, do not perform their tasks, an OECD analysis found that this was not the case. Nevertheless, the OECD did find that these tasks could be performed in a less dispersed and more efficient and economical manner (OECD, 2011; Pevcin, 2012). One way of achieving this aim lies in inter-municipal cooperation (IMC).

According to the ECLSG, in exercising their powers local authorities shall be entitled to cooperate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest (Art. 10.). Slovenian legislation foresees the following forms of IMC: the creation of 1) public agencies, public funds, public institutes, public companies, and institutions; 2) joint municipal administrative bodies that carry out individual tasks pertaining to municipal administration; 3) joint bodies for exercising the rights of municipalities to found joint public institutes or public companies; 4) joint bodies for the legal defence of municipalities and legal persons founded by municipalities appearing before the courts or other state bodies; 5) interest groups for the joint management and execution of individual administrative tasks and for carrying out joint developmental and investment programmes; and 5) organisations to represent and exercise local self-government and to coordinate and provide for common interests (see LSGA).<sup>16</sup> Of all the forms of IMC found in Slovenia, the creation of joint municipal administration (JMA) bodies was revealed to be the most widespread. Although the option of founding bodies of this kind was foreseen with regard to smaller municipalities in the LSGA of 1993, it was not until 1999 that the first such organisation was founded. The reason was that the law did not regulate the question of founding a joint body of this kind and this could not, therefore, be carried out in practice.<sup>17</sup> Although this shortcoming was addressed in 1997, and the option of founding bodies of this kind was no longer limited to smaller municipalities, there was no noticeable impact on the number of JMA bodies. As can be seen in Graph 4 (see *infra*), a breakthrough occurred in 2007. Since then, the number of JMA bodies has grown rapidly, as has the share of municipalities included in one or more of these bodies. At present, over 90% of Slovenian municipalities belong to a JMA body.

<sup>16</sup> See LSGA. For a detailed discussion see Rakar, Tičar & Klun (2015).

<sup>17</sup> The Constitutional Court of the Republic of Slovenia reached the same conclusion in Decision No. U-I-98/95 of 11. 7. 1996.

Empirical research has shown that the increase in the number of JMA bodies was the result of a change in the law<sup>18</sup> governing the financing of municipalities, which enabled co-financing by the state of the operations of these bodies, in the amount of 50% of the expenses incurred in the previous year by an individual municipality for the operation of such a body (see Rakar & Grmek, 2011; Mele & Žohar, 2011, p. 105).

That co-financing by the state was a key factor in the founding of new JMA bodies can be seen in the fact that the number of newly founded bodies already began to dip in 2010. It is therefore possible to conclude that those bodies founded largely because of a financial incentive from the state were mostly founded between 2007 and 2009. The rising trend of establishing JMA bodies stopped in 2011 (see *infra*, Graph 4). The reasons for this have not been analysed yet. Nevertheless, the government aims to enhance IMC in the form of JMAs in the strategy of further development of Slovenian local self-government until 2020 and by means of amendments to the Financing Municipalities Act (FMA).<sup>19</sup>

An analysis of the tasks of JMA bodies shows that most of them (58%) are active in the field of authoritative administrative tasks (inspection and local police activities). The share of JMAs in the field of spatial planning and environment, where municipalities face several challenges, is at around 13%, while it is at approximately 60% for local inspection and local police (Rakar, Tičar & Klun, 2015). The proposed amendments to the FMA discussed above aim to broaden the scope of tasks performed by JMAs and increase the number of municipalities involved.

The reasons for the dominance of these types of tasks are of a legal and practical nature. The FMA stipulates that the state will co-finance inspection, local police, financial services, internal audits, spatial planning, and public services. Through these bodies, these types of tasks can be handled in a more unbiased and objective manner and the collected fines represent revenue in the municipal budget.

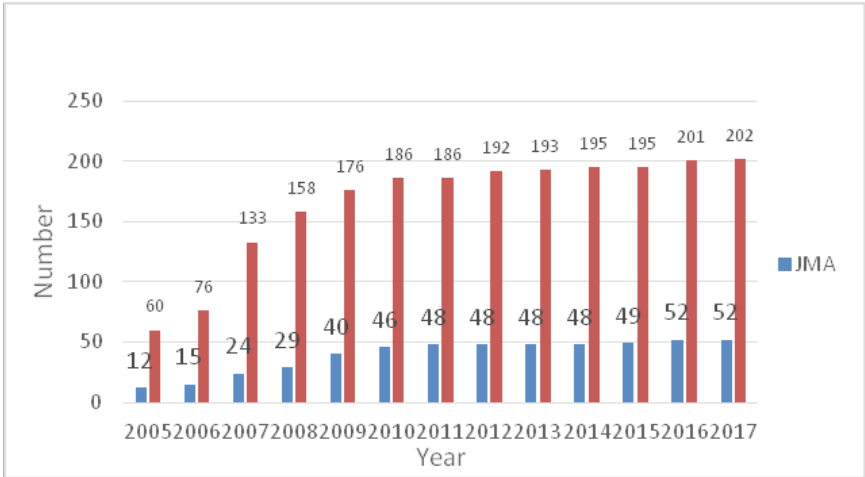
The founding of JMA bodies could indicate those areas where municipal mergers and the establishment of a second level of local self-govern-

<sup>18</sup> The Act Amending the Financing Municipalities Act, which was intended to take effect on 1 January 2006 and which foresaw allocations of funds from the state budget, was not practicable, as adequate delegated legislation had not been issued. It was not until the adoption of a new law on municipal financing, complete with adequate delegated legislation, that the first real steps in this direction were taken. The new law took effect on 25 July 2007.

<sup>19</sup> Act Amending the Financing Municipalities Act (ZFO-1C), Official Gazette of the Republic of Slovenia No. 71/17 of 13. 12. 2017.

ment could occur (see Rakar Tičar & Klun, 2015). The Court of Audit of the Republic of Slovenia (2012), on the contrary, feels that the option of founding JMA bodies, together with co-financing for the operations of these bodies, as well as the entire system of financing municipalities, has had the opposite effect. In its opinion, these factors are responsible for a lack of interest in mergers amongst smaller municipalities.

Graph 4: *Number of JMA bodies founded and municipalities involved in the period 2005–2017.*



Source: Author, based on the Ministry of Public Administration (2017).

### 3.5. Financial Resources

The ECLSG sets out a well-structured framework for local finance. Amongst the eight principles of local financial resources listed in Art. 9. (Milunovič, 2018), we may distinguish between basic and derived principles, the former being adequacy, commensurability, and own resources (Grad, 2018).

The constitutional framework for local finance consists of provisions of Art. 9., 142., 147., and 148. While Art. 9. is general and principal in nature (“*Local self-government in Slovenia is guaranteed*”), Art. 142. addresses local finance directly. In 2013, a so-called fiscal rule was incorporated in the Constitution. According to the Constitutional Court, the adequate-

ness of a system of local finance should be assessed against an “abstract” municipality, not the actual needs of concrete municipalities, and should be adequate for the majority of municipalities.<sup>20</sup> Additionally, the principles of financial and functional autonomy are not the only principles that influence the financing of municipalities; the principles of solidarity and equality before the law should be taken into account when regulating the financing of mandatory tasks, too.<sup>21</sup> According to Grad (2018), the Slovenian Constitution goes beyond the requirements of the ECLSG; however, legislative implementation of these provisions has always been problematic. This is because the legislator has always tried to make an exception of the constitutional rule that the municipality is financed from its own sources, while the exception (additional funds by the state) was made to be a rule.<sup>22</sup>

Several laws regulate local finance: the LSGA, the Financing of Municipalities Act of 2006 (FMA-2006)<sup>23</sup>, and the Public Finance Act (PFA). According to the Constitution and the LSGA, the system of local government financing in Slovenia is based on: 1) own resources, 2) additional state funds (called *financial equalisation*) for economically weaker municipalities which cannot adequately finance their responsibilities from their own resources, and 3) borrowing.

Own resources comprise tax revenues (devolved or shared taxes), revenues from property owned, charges, and duties. Nevertheless, it should be pointed out that despite the fact that the share of tax revenues is high, the regulation on collected taxes is determined by the state and not by local authorities. Personal income tax is a resource belonging to municipalities in a prescribed share (54%, but it is not necessary for the whole amount to be transferred to the local budget because the share is divided into the obligatory share, which accounts for 70% of the prescribed 54%, and a so-called *solidarity share* of 30%, which can be transferred to other municipalities which are economically weaker). Other taxes comprise compensation for the use of building land, property tax, real estate transfer tax,

<sup>20</sup> Decisions No. U-I-98/95 of 11. 7. 1996 and No. U-I-24/07 of 4. 10. 2007.

<sup>21</sup> Decision No. U-I-24/07 of 4. 10. 2007.

<sup>22</sup> In this respect, the Constitutional Court adopted a series of decisions establishing the non-compliance of the statutory regulation with the constitutional one, the most important of which was Decision No. U-I-24/07.

<sup>23</sup> In 2008 FMA-2006 was amended due to the ruling of Constitutional Court no. U-I-24/07 of 4. 10. 2007 – since then the act has not been changed substantially.

taxes on movable property, inheritance and gift taxes, tax on profit from gambling, and the like.

The tax on immovable property includes two kinds of taxes: 1) property tax, which is settled by the state (only the tax rate can be changed by municipal decision) and 2) compensation for the use of building land (this is the only real completely-own tax source as all the elements of tax obligations, i.e., the tax base, the tax rate, and exemptions are imposed by the municipality).

Amongst municipal tax revenues, only taxes on immovable property can be treated as municipal own taxes in terms of the ECLSG (Art. 9.3.) (Milunović, 2018). Namely, according to the government and the ministry in charge of local self-government, the personal income tax mentioned above fulfils the conditions for being treated as the “own resource” of municipalities in terms of the ECLSG. They are, *inter alia*, referring to the decision of the Constitutional Court no. U-I-150/15 of 10 November 2016, in which the Constitutional Court reasoned that own resources of municipalities must be in direct relationship with the municipality, which means that the law directly determines municipalities as the beneficiaries of a resource, although they are, technically speaking, collected by the state. The crucial statement in that decision is: “Accordingly, FMA-2006 in Art. 6 stipulates that a share of personal income tax is an own tax source of municipal finance.” Art. 6 of FMA-2006 is entitled “Own Tax Resources” and stipulates municipalities as the beneficiaries of a share of personal income tax (Rakar & Klun, 2016).

It must be additionally explained that provisions of Art. 6 of the FMA-2006 are a consequence of the decision of the Constitutional Court no. U-I-24/07 of 4 October 2007. In this decision the Constitutional Court ruled that Art. 8 of the FMA-2006 (which at the time regulated allocated financial resources) was not in accordance with Art. 142. and Art. 140. of the Constitution.<sup>24</sup> Namely, Art. 8 of the FMA-2006 stipulated that a share of personal income tax be regarded as the own financial resource of municipalities, despite the fact that it was the revenue of the state budget and was subsequently allocated to municipalities. The Constitutional Court reasoned as follows: “The first sentence of Art. 142. of the Constitution, according to which municipalities are financed from their own sources, entails a rule which the legislature must observe when developing a system of their financing. Municipalities are themselves primarily

<sup>24</sup> For an overview of the legislative regulation of local finances see Lavtar (2018).

responsible for exercising local self-government. Therefore, the legislature must first directly and primarily ensure that the municipalities have their own sources, sufficient to ensure funding for financing their tasks. Funds from personal income tax and other taxes that are paid into the state budget and then allocated to municipalities are not sources that municipalities ensure themselves and therefore they cannot be considered municipalities' own funding. A system which is based on such allocated state sources causes a prevailing dependency of municipalities on state budgetary funding, which is inconsistent with the requirement of the financial autonomy of municipalities which follows from Art. 142 of the Constitution and the requirement of the functional independency of municipalities, which follows from Art. 140 of the Constitution."<sup>25</sup> (Rakar & Klun, 2016).

It can be summarised that the definition and the allocation of own tax resources, according to the FMA-2006 do not follow the financial principles of the ECLSG from the first and third paragraph of Art. 9., nor do they follow other international criteria for classifying their own taxes (Milunović, 2018). The share of local taxes in local revenues stands at around 9% (Table 3).

*Table 3: Share of local taxes in local revenues*

Year	2013	2014	2015
<b>Tax revenues</b>	9.5%	8.35%	8.89%

Source: Author, based on the Ministry of Finance of the Republic of Slovenia (2017).

Nevertheless, the autonomy of municipalities on the expenditure side is much better than on the revenue side. Municipalities are free to decide how they spend their revenues, with the exception of earmarked state grants. It can be said that municipalities are independent in making expenditure decisions within the regulations of public finance and taking into consideration the status of municipal staff (a regulation of the civil servant system) and their salaries, which are determined in accordance with the law which applies to all public servants (Rakar & Klun, 2016).

<sup>25</sup> <http://odlocitve.us-rs.si/en/odlocitev/AN03045?q=U-I-24%2F07> (cf. decision of the Constitutional Court no. U-I-164/13 of 10. 6. 2015, point 8 of reasons for decision).



## 4. Discussion

According to the economic data presented, Slovenia is having difficulty with the implementation of the principle of subsidiarity. This has also been observed by the Congress of Local and Regional Authorities (CL-RAE). Both monitoring reports (in 2001 and 2011) stressed the importance of regionalisation for decentralisation and the implementation of the principle of subsidiarity. Namely, municipalities as they are now cannot take over a larger share of public functions due to their limited capacities (Haček & Bačlija, 2014; Prebilič & Bačlija, 2013).

There are at least two options for enhancing their capacities, but both have general and specific limitations in Slovenian political and administrative contexts. IMC as the first option (see Teles, 2016) cannot in principle substitute for the second level of local self-government, but it may be an intermediate step towards regionalisation (Bačlija, 2018; cf. Franzke, Klimovsky & Pinterič, 2016). Additionally, despite financial incentives, it has obviously reached its limit, at least as far as JMAs are concerned (see *supra*, Graph 4; Rakar, Tičar & Klun, 2014). The merging of municipalities as the second option is (at least politically) not a viable means of enhancing municipalities' capacities in Slovenia.

According to the economic data presented, Slovenia is having difficulty with the implementation of the principle of financial autonomy, too. However, we can agree with Lavtar (2018) that it would be ideal if such local communities and the assigned vertical tax structure could be formed which were fully capable of using their own financial resources to cover their needs. However, this could be achieved only in sufficiently large municipalities with an appropriate number of inhabitants. Because this is not the case in Slovenia, the local financial system cannot be based on the principle of financial autonomy in the sense that the major part of municipal revenues would be constituted by municipal own taxes, but on the principle of solidarity: first between municipalities and then between municipalities and the state (financial equalisation) (Lavtar, 2018). Nevertheless, given the situation of public finances in Slovenia and global development trends, with the increasing complexity of local governance, major shifts in the municipal finance model cannot be expected, especially not in the direction of providing significantly higher financial autonomy or a significantly higher volume of own tax resources. However, it is important to upgrade the system towards the redistribution of existing tax resources between the state and local units by strengthening the elements

of the tax autonomy of municipalities and ensuring the autonomous disposal of allocated resources (Milunovič, 2018).

Because the capacity of local governments, especially their organisational and financial capacity, is of special importance in assessing the appropriate degree of decentralisation of powers, functions, and tasks (Koprič et. al., 2014), it should be kept in mind that the responsibility for capacity-building is shared between central and local government. The central government defines the legislative framework within which municipalities may act. Given the situation regarding IMC in Slovenia, it may be claimed that municipalities have not yet taken advantage of all the opportunities. Leaving JMAs aside, there are ample opportunities, for instance, within the organisation of services of general non-economic interest, where more than 1,000 public institutes have been established at the municipal level. On the other hand, it is true that the central government has enabled (or in some cases even fostered) the fragmentation of municipalities and therefore contributed to the capacity issue of Slovenian municipalities (cf. Senčur, 2012).

## 5. Conclusion

The monitoring of CLRAE in 2001 and 2010 established no discrepancies between the Slovenian normative regulation of the system of local self-government and the ECLSG (Lavtar, 2018). Nevertheless, due to the inevitable gap between legal regulation and implementation in practice, several challenges have been identified that need to be addressed in the future. The issues have been identified in the Strategy of Further Development of Slovenian Local Self-Government until 2020, which was peer-reviewed by the Council of Europe (CoE) in July 2017.<sup>26</sup> The CoE noted the absence of clear political support on part of the National Assembly and the National Council, the opposition of associations of municipalities, and a lack of interest on part of the general public and major political actors. Evidently, additional effort will have to be exerted to continue the dialogue between the major actors in this process in order to reduce the gap identified above.

<sup>26</sup> Available in English at [http://www.mju.gov.si/si/lokalna\\_samouprava/](http://www.mju.gov.si/si/lokalna_samouprava/).

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## TWENTY YEARS OF THE EUROPEAN CHARTER OF LOCAL SELF- GOVERNMENT IN SLOVENIA: A SUCCESS STORY?

### *Summary*

*In the approximately two and a half decades since 1990, Slovenia has undergone a series of unprecedented historical events and has often been characterised as a success story. In the field of local self-government, major legal changes occurred several years before the ratification of the ECLSG. Nevertheless, these changes were already in line with this document. The paper focuses on the assessment of the development of Slovenian local self-government in the light of ECLSG's provisions on subsidiarity and financial autonomy. As to the first, it may be concluded that, according to internationally established quantitative indicators of decentralisation, Slovenia belongs to the group of centralised states. The share of local (subnational) expenditure as a share of total public expenditure is at around 20%, while the share of local (subnational) expenditure as a share of GDP accounts for approximately 10%. General government employment as a percentage of total employment is at around 17%, of which only 24% are local employees. As to the second, the Slovenian Constitution goes beyond the requirements of the ECLSG on financial resources; however, the legislative implementation of these provisions has always been problematic. In general, the autonomy of municipalities on the expenditure side is much better than on the revenue side. Given the situation of public finances in Slovenia and global development trends, with the increasing complexity of local governance, major shifts in the municipal finance model cannot be expected, especially not in the direction of providing significantly higher financial autonomy or a significantly higher volume of own tax resources. However, it is important to upgrade the system towards the redistribution of existing tax resources between the state and local units by strengthening the elements of the tax autonomy of municipalities. Based on all of the above, it may be concluded that Slovenia is having difficulty with the implementation of both the principle of subsidiarity and principle of financial autonomy. A look behind the curtain therefore relativises the "success story" label.*

**Keywords:** reform, local self-government, inter-municipal cooperation, financial resources, Slovenia



## DVADESET GODINA PRIMJENE EUROPSKE POVELJE O LOKALNOJ SAMOUPRAVI U SLOVENIJI: PRIČA O USPJEHU?

### Sažetak

*U posljednjih se 25 godina u Sloveniji odvio niz događaja bez presedana u njezinoj povijesti. Često ju se navodilo kao uspješan primjer. U području slovenske lokalne samouprave glavne su se zakonske izmjene dogodile nekoliko godina prije ratifikacije Europske povelje o lokalnoj samoupravi (EPLS), no bez obzira na to bile su u skladu s tim dokumentom. Rad se bavi procjenom razvoja slovenske lokalne samouprave u svjetlu odredbi EPLS-a o supsidijarnosti i financijskoj autonomiji. Što se supsidijarnosti tiče, zaključak je da prema međunarodnim brojčanim pokazateljima Slovenija pripada skupini centraliziranih država. Udio lokalnih (subnacionalnih) troškova kao udio ukupnih javnih troškova iznosi oko 20%, dok udio lokalnih (subnacionalnih) troškova kao udio BDP-u iznosi otprilike 10%. Također, postotak zaposlenosti opće države u ukupnoj zaposlenosti kreće se oko 17%, a lokalni zaposlenici čine samo 24% od toga. Što se pak tiče financijske autonomije, Ustav Republike Slovenije stroži je po pitanju financijskih resursa od EPLS-a, no probleme uvijek stvara uvrštenje relevantnih odredbi u zakon. Općenito se može reći da je autonomija općina izraženija kada se o rashodima a ne prihodima. S obzirom na stanje javnih financija u Sloveniji i svjetskih trendova koji upućuju na sve složeniji lokalni governance, ne može se računati na značajnije promjene u modelu općinskog financiranja. Pogotovo se ne može računati na znatno veću financijsku autonomiju ili znatno veći udio vlastitih poreznih resursa. Bez obzira na to, važno je unaprijediti sustav s ciljem redistribucije postojećih poreznih resursa između države i lokalnih jedinica na način da se ojačaju elementi porezne autonomije općina. S obzirom na sve navedeno, možemo zaključiti da primjena načela supsidijarnosti i financijske autonomije u Sloveniji ne ide sasvim glatko, što znači da detaljniji uvid u situaciju čini priču o uspjehu relativnom.*

*Ključne riječi: reforme, lokalna samouprava, međuopćinska suradnja, financijski resursi, Slovenija*